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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,393	05/26/2000	Thomas M. Krikorian	9660-000001	7066

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EXAMINER

ALAM, UZMA

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/579,393

Applicant(s)

KRIKORIAN ET AL

Examiner

Uzma Alam

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Amendment

This action is responsive to the amendment filed on October 18, 2004. Claims 1-46 are pending. Claims 1-46 represent a system and method for a media playback system connected to a network. Claims 6, 7, 29, and 30, all dependant claims, have been amended to add new limitations.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-13 and 29-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claims 6 and 29 the limitation on line 3 of the claim stating "relative percentages of time" is undefined. The term "relative percentages of time" is a relative term which renders the claim indefinite.

As per claims 7 and 30, the limitation on line 2 of the claim stating "increase or decrease the relative frequency" is unclear. The term "relative frequency" is a relative term which renders the claim indefinite.

The terms "relative percentages of time and relative frequency" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8-12, 14, 16, 17, 19-25, 27, 31-35, 37, 39, 40 and 42-46 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Krikorian US Patent No. 5,726,909. Krikorian teaches the invention as claimed including a continuous play of background music system.

As per claims 1 and 24, Krikorian teaches the continuous play broadcast system and method comprising a continuous play broadcast system comprising:

a distributed communications system (column 1, lines 6-12);

a playback control device that is connected to said distributed communications system and that includes an output device, memory that stores digital media files and a continuous play program, and a controller that outputs said digital media files to said audio output device according to said continuous play program wherein said media files include at least one of audio, video and announcements (column 3, lines 59-67; column 4, lines 1-14; column 4, lines 41-58);

a computer that is connected to said distributed communications system and accessing a web site via said distributed communications system using a computer and a web browser (column 3, lines 33-46); and

a web server that is connected to said distributed communications system and to a master library of said digital media files, wherein said computer accesses said web server via said

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distributed communications system and via said website to alter said continuous play program for said playback control device (column 3, lines 1-17; column 4, lines 59-67; column 5; column 6, lines 1-4).

As per claims 2 and 25, Krikorian teaches the continuous play broadcast system and method of claims 1 and 24 wherein said computer includes a browser module for accessing said web server and wherein said web server transmits executable files to said computer for creating said continuous play program (column 4, lines 27-40; column 5, lines 10-18; column 7, lines 36-45).

As per claims 4 and 27, Krikorian teaches the continuous play broadcast system and method of claims 1 and 24 wherein said computer and said playback control device are integrated (column 3, lines 59-67; column 4, lines 1-14).

As per claims 6 and 29, Krikorian teaches the continuous play broadcast system of claims 2 and 25 wherein said executable files allow said computer to select a plurality of predetermined collections of said digital media files, to allocate relative percentages of time at which digital media files from respective collections are played to said plurality of predetermined collections and to create a composite collection that randomly selects said digital media files from said collections based on said allocated percentages (column 5, lines 33-43).

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As per claims 7 and 30, Krikorian teaches the continuous play broadcast system of claims 6 and 29 wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to increase or decrease the relative frequency at which said at least one of said digital media files is played in said composite collection (column 5, lines 44-50).

As per claims 8 and 31, Krikorian teaches the continuous play broadcast system and method of claims 6 and 29 wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to prevent said at least one of said digital media files from playing in said composite collection (Krikorian column 5, lines 51-67).

As per claims 9 and 32, Krikorian teaches the continuous play broadcast system and method of claims 6 and 29 wherein said executable files allow said computer to select at least one of said digital media files within said predetermined collections and to prevent said at least one of said digital media files from playing during preselected times in said composite collection (Krikorian column 5, line 51-67).

As per claims 10 and 33, Krikorian teaches the continuous play broadcast system and method of claims 6 and 29 wherein said executable files allow said computer to assign said predetermined collections to a time-based schedule that forms part of said continuous play program (Krikorian column 6, lines 36-64).

As per claims 11 and 34, Krikorian teaches the continuous play broadcast system and method of claims 10 and 33 wherein said executable files allow said computer to assign said composite collection to said time-based schedule (Krikorian column 6, lines 36-64).

As per claims 12 and 35, Krikorian teaches the continuous play broadcast system and method of claims 10 and 33 wherein a smallest time unit provided in said time-based schedule can be varied (Krikorian column 6, lines 36-64).

As per claim 14 and 37, Krikorian teaches the continuous play broadcast system and method of claims 2 and 25 wherein said executable files allow said computer to access continuous play programs for a plurality of said playback control devices (column 5, lines 10-50).

As per claims 16 and 39, Krikorian teaches the continuous play broadcast system and method of claims 2 and 25 wherein said executable files allow said computer to display a digital media file that is currently being played by said playback control device and at least one digital media file that follows said digital media file that is currently being played (column 5, lines 51-67).

As per claims 17 and 40, Krikorian teaches the continuous play broadcast system and method of claims 16 and 24 wherein said web server delivers at least one digital media file to

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said computer as a streaming media file for output to said output device connected to said computer (column 4, lines 27-40).

As per claims 19 and 42, Krikorian discloses the continuous play broadcast system and method of claims 2 and 25 wherein said executable files allow said computer to select business hours to operate said playback control device (column 6, lines 65-67; column 7, lines 1-6).

As per claims 20 and 43 Krikorian discloses the continuous play broadcast system and method of claims 2 and 24 wherein said web server includes a password logon security module for accessing said continuous play programs (column 4, lines 15-26).

As per claims 21 and 44 Krikorian discloses the continuous play broadcast system and method of claims 2 and 24 wherein said master library further contains at least one of digital announcement files, video files, and text/graphics files (column 3, lines 9-17).

As per claim 22 and 45, Krikorian discloses the continuous play broadcast system and method of claims 21 and 25 wherein said executable files allow said computer to schedule at least one of said digital announcement files in said continuous play broadcast of said playback control device (column 6, lines 16-67; Figure 4).

As per claims 23 and 46, Krikorian discloses the continuous play broadcast system and method of claims 22 and 25 wherein said executable files allow said computer to schedule at

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least one of said digital announcement files and said video files in said continuous play broadcast of said playback control device on a recurring basis (column 6, lines 58-64).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5, 13, 15, 18, 26, 28-30, 36, 38 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krikorian US Patent No. 5,726,909 in view of Leek et al. US Patent No. 6,587,127. Leek discloses the invention substantially as claimed including a content player with user profile.

As per claims 3 and 26, Krikorian discloses the continuous play broadcast system and method of claims 2 and 25. Krikorian does not disclose wherein said executable files are at least one of Active-x components, Java Applets and Java Script. Leek discloses Java Applet files. See column 4, lines 50-67. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the Java Applets of Leek with the executable files of Krikorian. A person of ordinary skill in the art would have been motivated to do this to accommodate a variety of browsers.

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As per claims 5 and 28, Krikorian discloses the continuous play broadcast system and method of claims 2 and 24 wherein said executable files allow said computer to select and manage custom playlists by selecting a plurality of said digital media files from said master library and by allowing at least one of sequencing said digital media files and playing said digital media files. See column 4, lines 59-67; column 5, line 1-32. Krikorian does not explicitly disclose randomly playing the files. Leeke discloses randomly playing the files. See column 8, lines 3-31. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine playing of Krikorian with randomly playing of Leeke. A person of ordinary skill in the art would have been motivated to do this to provide personalized content.

As per claims 13 and 36, Krikorian teaches the continuous play broadcast system and method of claims 2 and 24. Krikorian does not disclose wherein said executable files allow said computer to select and arrange custom collections by allowing at least one of selecting a plurality of said digital media files from said master library and by sequencing said digital media files and randomly playing said digital media files. See column 6, lines 11-20; column 8, lines 4-31; column 48, lines 48-67. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine playing files of Krikorian with selecting files of Leeke. A person of ordinary skill in the art would have been motivated to do this to provide personalized content.

As per claims 15 and 38, Krikorian teaches the continuous play broadcast system and method of claims 14 and 25. Krikorian does not disclose wherein said executable files allow said computer to group at least two of said playback control devices and to create a common

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continuous play program for said at least two of said playback control devices. Leeke discloses grouping two playback control devices. See column 49, lines 36-65. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine playback control devices of Krikorain with grouping the devices of Leeke. A person of ordinary skill in the art would have been motivated to do this to integrate audio and video files.

As per claims 18 and 41, Krikorian teaches the continuous play broadcast system and method of claims 1 and 24. Krikorian does not disclose wherein said web server stores a profile for said playback control device. Leeke discloses storing a profile. See column 6, lines 11-20. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine a profile of Leeke with the web server and library of Krikorain. A person of ordinary skill in the art would have been motivated to do this to manage user data and preferences.

Response to Arguments

Applicant's arguments filed on October 8, 2004 have been fully considered but they are not persuasive. Krikorian teaches the update of advertising announcements in the main library of the server and also that the server adds or deletes musical selections. This teaches a web server that is connected to a network where the continuous play program and playback control is altered via a web server. The web server is shown by the bridging station in Krikorian in Figure 1. Column 4, lines 59-67, column 5, and column 6, lines 1-4 are pointed to for further detail.

As per the argument that Krikorian does not teach preventing a user from altering a continuous play program for an end user computer when the user is located remotely from the end user computer, this function of the system is not a limitation of any of the claims presented.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uzma Alam whose telephone number is (571) 272-3995. The examiner can normally be reached on Monday-Tuesday 11:30am-8pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Uzma Alam
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